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TO:	FROM:
Attn: Examiner Taeyoon Kim	Kelly Patrick Fitzgerald
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RE:	APPLICATION SERIAL NUMBER:
Response to Restriction Requirement	10/565,537

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PATENTIN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: Michael Melkonian; Confirmation No. 9911
Bjoern Podola
Serial No.: 10/565,537
Filed: January 19, 2006 Customer No.: 28863
Examiner: Taeyoon Kim
Group Art Unit: 1651
Docket No.: 1020-018US01
Title: METHOD AND DEVICE FOR CULTIVATING EUCARYOTIC
MICROORGANISMS OR BLUE ALGAE, AND BIOSENSOR WITH
CULTIVATED EUCARYOTIC MICROORGANISMS OR BLUE ALGAE

CERTIFICATE UNDER 37 CFR 1.8 I hereby certify that this correspondence is being transmitted via facsimile to the United States Patent and Trademark Office on March 6, 2007.

By: Caryl Harriman
Name: Caryl Harriman

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Alexandria, VA 22313-1450

Dear Sir:

This Response is responsive to the Restriction Requirement mailed February 5, 2007.

Claims 1-17 have been restricted under 35 U.S.C. § 121 as follows:

- I. Claims 1-7, drawn to a method for cultivating eukaryotic microorganisms.
- II. Claims 8-17, drawn to a device for cultivating eukaryotic microorganisms.

Applicants hereby elect Group I (claims 1-7) *with traverse*. According to MPEP § 803, there are two criteria for a proper requirement for restriction between patentably distinct inventions: (A) The inventions must be independent or distinct as claimed; and (B) there must be a serious burden on the Examiner if restriction is required (emphasis added). The current Restriction Requirement fails to meet either of these two criteria.

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In the Restriction Requirement, the Examiner asserted that Inventions I and II are related as process and apparatus, and characterized the “special technical feature” of the invention to be “cultivating eukaryotic microorganisms on a perforated support.” The Examiner stated that since this technical feature is known in the art (citing Tumchenok RU 2164893C2), no special technical feature unites Inventions I and II.

The Examiner’s analysis is incorrect insofar as the Examiner’s characterization of Inventions I and II oversimplifies the claimed inventions. Inventions I and II recite many features that may unite these inventions, and the Examiner’s analysis ignores such unifying features of the claims. Indeed, the Examiner failed to even address the features of independent claims 1 and 8 for purposes of assessing whether any special technical feature unites the inventions.

Independent claim 1 recites a method for cultivating eukaryotic microorganisms, in particular algae, microalgae or blue algae, wherein:

- a perforated support (14) comprising a first major surface (19) and a second major surface (22) is provided, wherein the support (14) comprises a web material and is essentially impermeable to eukaryotic microorganisms (20) or to blue algae,
- the eukaryotic microorganisms (20) or the blue algae are applied to the first major surface (19) where they remain immobilized and from which they are adapted to be removed,
- an aqueous solution (18) flows along the first major surface (22),
- a portion of the flowing aqueous solution (18) is essentially transported by capillary forces from the second major surface (22) through the support (14) to the first major surface (19),
- whereby the first major surface (19) is supplied with aqueous solution (18), and
- wherein the applied eukaryotic microorganisms (20) or blue algae grow on the first major surface (19).

In a similar fashion, independent claim 8 recites a device for cultivating eukaryotic microorganisms, in particular algae, microalgae or blue algae, comprising

- a perforated support (14) comprising a first major surface (19) and a second major surface (22) opposite said first major surface (19),
- wherein the eukaryotic microorganisms (20) or the blue algae are adapted to be cultivated on the first major surface (19) of the perforated support (14), and the

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perforated support (14) is essentially impermeable to the eukaryotic microorganisms (20) or the blue algae to be cultivated, and

- a film comprising an aqueous solution (18), said film merely being in contact with the second major surface (22) of the support (14) and flowing along the second major surfaces (22),
- wherein the aqueous solution (18) is adapted to be transported by capillary forces from the second major surface (22) through the perforated support (14) to the first major surface (19).

The Examiner's analysis failed to address the fact that the body of claims 1 and 8 include many features that may distinguish the prior art, and may provide a unifying concept. Instead, the Examiner simply characterized the "special technical feature" of the invention to be "cultivating eukaryotic microorganisms on a perforated support" even though both claims 1 and 8 clearly recite more specific features that may unify these two claims into an inventive concept.

For these reasons, the Examiner's reliance on an oversimplification of "special technical features" fails to establish that independent claims 1 and 8 are either independent or distinct as required by MPEP 803. Also, for similar reasons, the Examiner has not (and cannot) demonstrate that any serious burden would arise to the Examiner if restriction is required. That is to say, given the similarities in the features of claims 1 and 8, the Examiner cannot demonstrate that examination of claims 1 and 8 would impose any serious burden as required by MPEP 803.

Applicants respectfully remind the Examiner that if this Restriction is maintained and Applicants submit a Divisional Application with respect to claims 8-17, the Examiner will be precluded from issuing any double patenting rejections of claims 8-17 based on claims 1-7. See MPEP 804.01.

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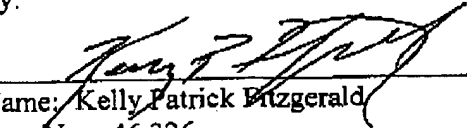
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Date:

By:

March 6, 2007

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